

Taxation and Revenue Department  
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**TECHNOLOGY JOBS TAX CREDIT**  
**Sections 7-9F-1 Through 7-9F-12 NMSA 1978**

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# **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

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**7-9F-1. SHORT TITLE.--This act may be cited as the "Technology Jobs Tax Credit Act".**  
**(Laws 2000, Chapter 22, Section 1)**

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**7-9F-2. PURPOSE OF ACT.--It is the purpose of the Technology Jobs Tax Credit Act to provide a favorable tax climate for technology-based businesses engaging in research, development and experimentation and to promote increased employment and higher wages in those fields in New Mexico. (Laws 2000, Chapter 22, Section 2)**

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**7-9F-3. DEFINITIONS.--As used in the Technology Jobs Tax Credit Act:**

A. "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with another person through ownership of voting securities or other ownership interests representing a majority of the total voting power of the entity;

B. "annual payroll expense" means the wages paid or payable by the taxpayer for the one-year period ending on the day the taxpayer applies for an additional credit pursuant to the Technology Jobs Tax Credit Act;

C. "base payroll expense" means the wages paid or payable by the taxpayer for the one-year period ending on the day one year prior to the day the taxpayer applies for an additional credit pursuant to the Technology Jobs Tax Credit Act, adjusted for any increase in the consumer price index for the United States for all items as published by the United States department of labor since that day;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "facility" means a factory, mill, plant, refinery, warehouse, dairy, feedlot, building or complex of buildings located within the state, including the land on which the facility is located and all machinery, equipment and other real and tangible personal property located at or within the facility and used in connection with the operation of the facility;

F. "qualified expenditure" means an expenditure or an allocated portion of an expenditure by a taxpayer in connection with qualified research at a qualified facility, including expenditures for depletable land and rent paid or incurred for land, improvements, the allowable amount paid or incurred to operate or maintain a facility, buildings, equipment, computer software, computer software upgrades, consultants and contractors performing work in New Mexico, payroll, technical books and manuals and test materials, but not including any expenditure on property that is owned by a municipality or county in connection with an industrial revenue bond project, property for which the taxpayer has received any credit pursuant to the Capital Equipment Tax Credit Act or the Investment Credit Act, property that was owned by the taxpayer or an affiliate before the effective date of the Technology Jobs Tax Credit Act or research and development expenditures reimbursed by a person who is not an affiliate of the taxpayer. If an expenditure is an allocation of an expenditure, the cost accounting methodology used for the allocation of the expenditure shall be the same cost accounting methodology used by the taxpayer in its other business activities;

G. "qualified facility" means a facility in New Mexico at which qualified research is conducted other than a facility operated by a taxpayer for the United States or any agency, department or instrumentality thereof;

H. "qualified research" means research:

(1) that is undertaken for the purpose of discovering information:

(a) that is technological in nature; and

(b) the application of which is intended to be useful in the development of a new or improved business component of the taxpayer; and

(2) substantially all of the activities of which constitute elements of a process of experimentation related to a new or improved function, performance, reliability or quality, but not related to style, taste or cosmetic or seasonal design factors;

I. "rural area" means any area of the state other than a class A county, a class B county that has a net taxable value for rate-setting purposes for any property tax year of more than three billion dollars (\$3,000,000,000), the municipality of Rio Rancho and the area within three miles of the exterior boundaries of a class A county;

J. "taxpayer" means any of the following persons, other than a federal, state or other governmental unit or subdivision or an agency, department, institution or instrumentality thereof:

(1) a person liable for payment of any tax;

(2) a person responsible for withholding and payment or collection and payment of any tax;

(3) a person to whom an assessment has been made if the assessment remains unabated or the assessed amount has not been paid; or

(4) for purposes of the additional credit against the taxpayer's income tax pursuant to the Technology Jobs Tax Credit Act and to the extent of their respective interest in that entity, the shareholders, members, partners or other owners of:

(a) a small business corporation that has elected to be treated as an S corporation for federal income tax purposes; or

(b) an entity treated as a partnership or disregarded entity for federal income tax purposes; and

K. "wages" means remuneration in cash or other form for services performed by an employee for an employer.

(Laws 2000, Chapter 22, Section 3)

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**7-9F-4. ADMINISTRATION OF ACT.--The department shall administer the Technology Jobs Tax Credit Act pursuant to the Tax Administration Act. (Laws 2000, Chapter 22, Section 4)**

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**7-9F-5. BASIC CREDIT--ADDITIONAL CREDIT--AMOUNTS--CLAIMANT.--**

**A. The basic credit provided for in the Technology Jobs Tax Credit Act is an amount equal to four percent of the amount of qualified expenditures made by a taxpayer conducting qualified research at a qualified facility.**

**B. The additional credit provided for in the Technology Jobs Tax Credit Act is an amount equal to four percent of the amount of qualified expenditures made by a taxpayer conducting qualified research at a qualified facility.**

**(Laws 2000, Chapter 22, Section 5)**

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**7-9F-6. ELIGIBILITY REQUIREMENTS.--**

**A. A taxpayer conducting qualified research at a qualified facility and making qualified expenditures is eligible to claim the basic credit pursuant to the Technology Jobs Tax Credit Act.**

**B. A taxpayer conducting qualified research at a qualified facility and making qualified expenditures is eligible to claim the additional credit pursuant to the Technology Jobs Tax Credit Act if:**

**(1) the taxpayer increases the taxpayer's annual payroll expense at the qualified facility by at least seventy-five thousand dollars (\$75,000) over the base payroll expense of the taxpayer;**

**(2) the increase in Paragraph (1) of this subsection has not previously been used to meet the requirements of this subsection; and**

**(3) there is at least a seventy-five thousand dollar (\$75,000) increase in the taxpayer's annual payroll expense for every one million dollars (\$1,000,000) in qualified expenditures claimed by the taxpayer in a taxable year in the same claim.**

**(Laws 2000, Chapter 22, Section 6)**

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**3.13.5.8 - AMOUNTS CONSTITUTING WAGES TO MEET ELIGIBILITY REQUIREMENTS**

A. In calculating the annual payroll expense and base payroll expense for purposes of determining eligibility for the additional credit under Subsection B of Section 7-9F-6 NMSA 1978, a taxpayer may include total wages paid to all employees at a qualified New Mexico facility. "Wages" as used in Subsection K of Section 7-9F-3 NMSA 1978 means "wages" as defined under section 3401(a) of the Internal Revenue Code. Thus, "wages" used to meet eligibility requirements of the Technology Jobs Tax Credit Act are the same as those that are included or will be included in box 1 of the annual statement of withholding (form W-2) as required under Subsection A of Section 7-3-7 NMSA 1978.

B. Example: Taxpayer X conducts research and development at a qualified facility in New Mexico. In addition to wages paid for employees directly involved in research and development, X pays wages to administrative personnel at the facility. Wages paid to administrative personnel may also be included in annual payroll expense and base payroll expense for purposes of determining eligibility for the additional credit under the Act. Taxpayer X may not include any expenses not included as wages on form W-2, such as expenses for employee health insurance, retirement plan contributions, or the value of employee stock options when calculating annual payroll expense and base payroll expense.

[3.13.5.8 NMAC - N, 10/31/05]

**3.13.5.10 - ELIGIBILITY REQUIREMENTS - ADDITIONAL CREDIT - ESTIMATES**

A. A taxpayer claiming the additional credit must compute annual payroll expense for the period specified in the application and must compute base payroll expense as of a date one year prior to the annual payroll date.

B. Because complete payroll data to calculate "annual payroll expense" and "base payroll expense" may not be available on the day the credit is applied for, a credit claimant may

estimate the number of these two amounts on the credit application, provided that the claimant must provide the actual “annual payroll expense” and “base payroll expense” amounts within forty-five days from the end of the calendar quarter in which the claim is applied for. The fact that an estimate is used in the claim must be clearly indicated. The department may withhold approval of the claim until the correct numbers are provided and will deny the claim if the correct numbers are not provided.

[3.13.5.10 NMAC - N, 10/31/05; A, 5/15/07]

#### **3.13.5.11 - WHEN CLAIM BARRED**

If a taxpayer claims any amount of research and development small business tax credit with respect to a reporting period, the taxpayer may not claim any amount of technology jobs tax credit with respect to that same period. If for the same reporting period an amount of technology jobs tax basic credit is claimed in addition to any amount of research and development small business tax credit, the amount of technology jobs tax credit will be disallowed by the department, which may result in an underpayment of tax. The taxpayer is not barred from applying for approval of new or additional technology jobs tax credit with respect to qualified expenditures in that reporting period.

[3.13.5.11 NMAC – N, 5/15/07]

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**7-9F-7. QUALIFIED EXPENDITURES.--The amount of a taxpayer's qualified expenditure is the purchase price for the relevant property or service.**

**(Laws 2000, Chapter 22, Section 7)**

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**7-9F-8. RURAL AREAS.--**The amount of the basic and additional credit for which a taxpayer is otherwise eligible shall be doubled if the qualified expenditures were incurred with respect to a qualified facility in a rural area. (Laws 2000, Chapter 22, Section 8)

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**7-9F-9. CLAIMING THE CREDIT FOR CERTAIN TAXES.--**

A. A taxpayer may apply for approval of a credit within one year following the end of the calendar year in which the qualified expenditure was made.

B. A taxpayer having applied for and been granted approval for a basic credit by the department pursuant to the Technology Jobs Tax Credit Act may claim the amount of the approved basic credit against the taxpayer's compensating tax, gross receipts tax or withholding tax due to the state of New Mexico; provided that no taxpayer may claim an amount of approved basic credit for any reporting period that exceeds the sum of the taxpayer's gross receipts tax, compensating tax and withholding tax due for that reporting period.

C. A taxpayer who has applied for and been granted approval for an additional credit by the department pursuant to the Technology Jobs Tax Credit Act may claim the amount of the approved additional credit against the taxpayer's income tax or corporate income tax due the state of New Mexico; provided that:

(1) no taxpayer may claim an amount of approved additional credit for any reporting period that exceeds the amount of the taxpayer's income tax or corporate income tax due for that reporting period; and

(2) a husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the additional credit that would have been allowed them on a joint return.

D. Any amount of approved basic credit not claimed against the taxpayer's gross receipts tax, compensating tax or withholding tax due and any amount of approved additional credit not claimed against the taxpayer's income tax or corporate income tax due for a reporting period may be claimed in subsequent reporting periods; provided that a husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the additional credit that would have been allowed them on a joint return.

(Laws 2000, Chapter 22, Section 9)

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**3.13.5.9 - STATUTE OF LIMITATIONS**

A. A taxpayer must file its application for approval of a credit within one year of the end of the calendar year in which the qualified expenditures were made.

B. Example: Taxpayer X makes qualified expenditures from January 1 through October 30, 2005. X must submit its application for credit under the Technology Jobs Tax Credit Act by no later than December 31, 2006.

[3.13.5.9 NMAC - N, 10/31/05]

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**7-9F-10. CREDIT CLAIM FORMS.--**The department shall provide credit claim forms. A credit claim shall accompany any return in which the taxpayer wishes to apply for an approved basic or additional credit, and the claim shall specify the amount and type of credit intended to apply to each return.  
(Laws 2000, Chapter 22, Section 10)

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**7-9F-11. RECAPTURE.--**If the taxpayer or a successor in business of the taxpayer ceases operations in New Mexico for at least one hundred eighty consecutive days within a two-year period after the taxpayer has claimed a basic credit or an additional credit at a facility with respect to which the taxpayer has claimed the basic credit or the additional credit, the department shall grant no further basic credit or additional credit to the taxpayer with respect to that facility. In addition, any amount of approved basic credit not claimed against the taxpayer's gross receipts tax, compensating tax or withholding tax and any amount of approved additional credit not claimed against the taxpayer's income tax or corporate income tax shall be extinguished, and within thirty days after the one hundred eightieth day of the cessation of operations, the taxpayer shall pay the amount of any gross receipts tax, compensating tax or withholding tax for which an approved basic credit was taken and any income tax or corporate income tax against which an approved additional credit was taken. For purposes of this section, a taxpayer shall not be deemed to have ceased operations during reasonable periods for maintenance or retooling or for the repair or replacement of facilities damaged or destroyed or during the continuance of labor disputes. (Laws 2000, Chapter 22, Section 11)

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**7-9F-12. DEPARTMENT REPORT.--In October 2003 and each year thereafter, the department shall report to the legislative finance committee and the revenue stabilization and tax policy committee on the fiscal and economic impacts of the Technology Jobs Tax Credit Act using the most recently available data for the two prior fiscal years. The report shall include the number of taxpayers who have received basic credits or additional credits under the Technology Jobs Tax Credit Act, the amounts of the basic credits and additional credits, the geographic locations of the qualified facilities and the payroll increases of taxpayers related to additional credits, subject to the confidentiality provisions of Section 7-1-8 NMSA 1978. (Laws 2000, Chapter 22, Section 12)**

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